

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

TAMI DENIO,

Plaintiff,

vs.

Civ. No. 01-249 WWD/DJS

SEARS, ROEBUCK AND CO., a New York
corporation, and LYNN FAHNESTOCK,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court upon the Motion to Dismiss Defendant Lynn Fahnestock [docket no. 11] filed May 4, 2001. Plaintiff has no objections to dismissing Defendant Fahnestock from Counts I, II, III, V, and VI. Plaintiff contends that it would be premature to dismiss Defendant Fahnestock from Count IV of the complaint. Apparently it is undisputed that Defendant Fahnestock's actions were within the scope of his employment; accordingly, I find that no retaliatory discharge cause of action as alleged in Count IV would lie against Defendant Fahnestock as an individual. *Bourgeois v. Horizon Health Care Corp.*, 117 N.M. 434, 437; 872 P.2d 852, 855 (1994).

WHEREFORE,

IT IS ORDERED that the claims against Defendant Lynn Fahnestock in Counts I, II, III, IV, V, and V of the complaint be, and they are hereby, DISMISSED.


UNITED STATES MAGISTRATE JUDGE